NOTES AND COMMENTS.

SPECULATION IN DAMAGE CLAIMS.

I.

IN the February NORTH AMERICAN REVIEW Mr. E. Parmalee Prentice writes on the above subject. He makes a good showing from his point of view; but by those who have observed, and by lawyers who have had experience in the trial of personal injury cases, his article will be regarded as from a corporation standpoint.

What he says about the "extensive litigation and large verdicts recovered" in the courts of Chicago is undoubtedly true; but the heavy damages given by the Chicago juries are not criterions of the damages recovered in many of the States, especially those west of the Mississippi and the New England States.

From an examination of the cases determined by Appellate courts in the past year for the States of Michigan, Wisconsin, Minnesota, Iowa, Nebraska, and North and South Dakota, we find seventy-four reversals for defendants against fifty-nine affirmances for plaintiffs; and in cases where plaintiffs have prevailed a verdict as large as $5,000 was rarely given.

Mr. Prentice, while complaining of the size and number of verdicts, gives no account of the nature and extent of the injuries received by the unfortunate plaintiffs—whether slightly or permanently injured by the loss of arms, legs, or eyes, or perhaps death of the wage-earner; and says nothing about the negligence or the fault of defendants.

It is admitted that personal injury cases are numerous, but they can not be regarded as inordinately so when we consider the use of recently discovered powers, the large number of new machines operated in the industrial world, and the incompetence of so many of the workmen employed.

It is also true that occasionally large verdicts are rendered, but it should not be forgotten that the right to recover for injuries to the person (plaintiff) through the negligence of the party in fault (defendant) without contributory negligence on the part of the plaintiff is an old and well-settled rule of law based upon considerations of justice. Contributory negligence on the part of the plaintiff prevents recovery. This important defence was unknown to the common law; but with such defence being held valid by our courts of last resort we think the defendants in this class of cases have no reason to complain.

A man would think it very strange if denied the right to recover damages from a wrongdoer who injured his property. Why should an exception be made for an injury to the human body? A woman loses her husband

through the negligence of a railroad company—a man has his child crippled for life (a constant source of expense) by a defective street through the negligence of a municipal corporation—a woman is injured by being suddenly thrown or jerked from a street car. These unfortunates are usually poor, wholly unable to employ counsel; therefore their cases are taken by attorneys upon contingent fees. What would become of them otherwise? As long as the theory of the law is exact justice to all, no valid reason can be shown why damages should not be given in meritorious cases, and no reason why these cases should not be prosecuted on contingent fees. The old law of champerty has been rightly repealed in many States. When in vogue it tended to deny many people in limited circumstances a redress for their wrongs.

In Minnesota, corporations are held under rightful subjugation. It is a noticeable fact that in trials the Court is "boss" and not the corporation. Here the right of attorneys to agree with their clients as to compensation is unrestricted, and no abuse arises out of the prosecution of these cases.

A certain prominent railroad company defends and settles about six hundred cases annually for about four per cent. of the aggregate damages claimed. Another with about five hundred cases pays about four and one-half per cent. in fighting and settling. Yet another with a six thousand-mile system disposes of these suits for even a smaller sum. And the same is true of other railroads centering in St. Paul, and of the extensive system of electric street railways operated in the Twin cities.

With the able and fearless judges who adorn the trial courts of this country, who rarely shrink from judicially assuming and regulating the actions and verdicts of juries, it cannot be said that these cases are "practically indefensible."

If, as is frequently claimed, juries are prejudiced against corporations, does not such prejudice have a natural origin? From the time a railroad buys its first piece of right of way to the last act of interstate commerce which it has evaded, has it ever shown a disposition to deal fairly and honestly with people? Yes; sometimes. But more frequently it desires to fight on general principles—endeavoring to convey to the public the impression that all damages recovered will be absorbed in attorneys' fees unless their own terms of settlement are accepted.

When the time comes that corporations seek honestly to ascertain the true facts of each case, and pay damages when liable, and treat claimants and opposing counsel honorably, and refrain from settling with clients behind their attorneys' backs (which is too frequently done), and, generally, manifest a broader spirit of equity and justice toward the public, then, and not till then, will personal injury cases diminish and the ends of justice be promoted.

S. P. CROSBY.

II.

THE article in the February number of THE NORTH AMERICAN REVIEW, on the subject of "Speculation in Damage Claims," by Mr. Prentice, of Chicago, although founded principally upon local experience, has a national application. The reports of the courts of appeals in every State of the Union will verify this statement. The perfected system of espionage, champerty, and conspiracy, which these "claim lawyers," runners, middlemen, and professional witnesses have formed, is the natural sequence of

organization to take advantage of the determination of certain classes to effect a more equal distribution of property.

The same mental peculiarities which make a Greenbacker, a Populist, a Socialist, or a Free Silverite, prompt the finding of a heavy verdict when a poor man is plaintiff and a rich man or a corporation is defendant, regardless of the law or the evidence.

The principal sufferers are, in a large measure, responsible for the success, thus far, of this highwayman in the jury box. The successful business men of the country decline to serve as jurors, take advantage of their exemptions or plead stress of business to an indulgent judge, who excuses them, allowing improvident professional talesmen to fill their places.

Moreover, the lists of names from which jurors are drawn are made, in most States, by aldermen and town politicians who, in remembering their impecunious constituents, necessarily omit the names of men of property. The result is that capital is not represented in the jury box. If the contest of the present and future is to be between capital and labor, as many claim, here is one sphere wherein labor may enter her judgments *ad libitum* for non-appearance.

There is but one remedy. The business men, the officers of banks, of railroads, and of corporations, commercial and manufacturing, must recognize the necessity of doing jury duty in civil cases when called. As twelve votes are essential for a verdict, in cases where manifest injustice may be done one vote of a fair man will preserve equity.

CHARLES NEVITT.

"CHESNUT," FOR EXAMPLE.

MY friend, who lives upon Chestnut Street, in one of the large inland cities, has shown me her considerable collection of addressed envelopes upon which Chestnut has been mis-spelled, and that by those who may be called educated—not a few of the writers being college-bred; one (it was hard to believe, but she proved it beyond question) prominent on the Board of an educational institution of national repute (I hope that is vague enough to prevent its being localized by my readers). Another Chesnutter is a State Librarian (this upon honor), another an eminent jurist—a most interesting list when scanned with comments by my friend and made to support her views concerning certain marked defects in our educational system—the great need of a public or general movement in behalf of *culture of the attention* in our primary schools.

Why is it, she asks, that so many really educated people have never learned to spell? "Why should a man who has made invaluable contribution to the medical science of his age," and she holds up one of her envelopes, "spell Chestnut like that?" When asked if she ever took pains to correct the mistake of her correspondents—those, for instance, who had been misspelling the word for years—she declares she could not do that for many reasons, one of which would be the loss of the peculiar pleasure she has in getting letters addressed to Chesnut Street, because they all add to her material for speculation upon what is, to her, a serious problem. When one of her old Chesnutters, an old gentleman of the old school, who never fails to cross his t's and to dot his i's, and who makes every letter as plain as print—when he recently wrote to her and spelled